

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

EDGAR ANDRES PENA-GONZALEZ       §  
  §  
VS.                                       §       CIVIL ACTION NO. \_\_\_\_\_  
  §       (DIVERSITY)  
SAM'S EAST, INC. D/B/A "SAM'S CLUB" §

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(B) (DIVERSITY)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant, SAM'S EAST, INC., incorrectly referred to as "Sam's Club", hereby removes to this Court the state court action described below.

1. On November 10, 2020, an action was commenced against Sam's East, Inc. in the 464<sup>th</sup> Judicial District Court of Hidalgo County, Texas, entitled *Edgar Andres Pena-Gonzalez vs. Sam's East, Inc. D/B/A Sam's Club* in cause number C-3356-20-L. A copy of the suit is *attached hereto as Exhibit A*.

2. The first date upon which Defendant received a copy of the said complaint was December 29, 2020, when Defendant was served with a copy of the said complaint and a citation from the said State Court. A copy of the citation is *attached hereto as Exhibit B*. In accordance with Local Rule 81, the following constitutes all of the executed process, pleadings, and orders served upon Plaintiff and Defendant in this action:

- A) Plaintiff's First Amended Petition;
- B) Copy of Return Citation of Defendant Sam's East, Inc.;
- C) Docket Sheet - State Court;
- D) Defendant's Original Answer, Affirmative Defenses, and Special Exceptions to Plaintiff's First Amended Petition, and Requests for Disclosure;
- E) Defendant's Request for Jury Trial;
- F) Order Granting Defendant's Special Exceptions;
- G) Order Setting Hearing on Defendant's Special Exceptions.

3. In addition and in accordance with the Local Rule, Defendant includes a copy of the docket sheet of the state court matter *a copy of which is attached hereto as Exhibit C*.

4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. On December 29, 2020, the Plaintiff served upon the Defendant Plaintiff's First Amended Petition, *a copy of which is attached hereto as Exhibit A*. In this First Amended Petition, Plaintiff plead that he is seeking monetary relief of \$1,000,000.00. As such, the amount in controversy is in excess of \$75,000.00, and removal is appropriate pursuant to 28 U.S. §1441(b).

5. Defendant is informed and believes that Plaintiff was and still is citizen of the State of Texas and resident of Hidalgo County, Texas.

6. Defendant, Sam's East, Inc., was, at the time of the filing of this action, and still is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Arkansas, and has been served summons and complaint in this action.

7. Copies of all pleadings, process, orders and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. §1446(a).

8. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

9. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

10. Plaintiff did demand a jury in the state court suit. Defendant likewise demanded a jury in the state court suit.

11. For the foregoing reasons, Defendant asks the Court to remove the suit to The United States District Court, Southern District of Texas, McAllen Division.

DATED: **January 25, 2021**

Respectfully Submitted,

**DAW & RAY, L.L.P.**

/s/ Jaime A. Drabek

**JAIME A. DRABEK**, Attorney-in-Charge

Federal ID No. 8643

**RICARDO G. BENAVIDES**

Federal ID No. 32205

**ROBERTO CANTU JR.**

Federal ID No. 3579145

**JACOB T. CASSO**

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**ATTORNEYS FOR DEFENDANT,**

**SAM'S EAST, INC.**

incorrectly referred to as "Sam's Club"

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served via electronic mail on all known counsel of record on the **25<sup>th</sup> day of January, 2021**, to-wit:

Ezequiel Reyna, Jr.

Heather Abreu

**LAW OFFICES OF EZEQUIEL REYNA, JR., P.C.**

702 W. Expressway 83, Suite 100

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**ATTORNEYS FOR PLAINTIFF**

**EDGAR ANDRES PENA-GONZALEZ**

/s/ Jaime A. Drabek

Jaime A. Drabek

THE STATE OF TEXAS §  
§  
COUNTY OF HIDALGO §

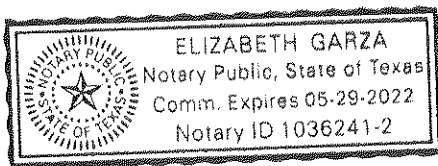
AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Jacob T. Casso of McAllen, Hidalgo County, Texas, who being by me duly sworn, deposes and says that he is an attorney for Defendant in the present cause filed by **Edgar Andres Pena-Gonzalez**; that he has been authorized to make this Affidavit; and that he has read the foregoing Notice of Removal and knows the contents thereof, and that the matters and facts therein contained are true and correct.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Jacob T. Casso, Affiant

SWORN TO AND SUBSCRIBED before me on January 25, 2021, by the said Jacob T. Casso.



  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS